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8 IN THE UNITED STATE DISTRICT COURT  
9 FOR THE WESTERN DISTRICT OF WASHINGTON  
10 SEATTLE DIVISION

11 MARIA BARNES and DEREK GANNON,  
12 individually and on behalf of all others  
13 similarly situated,

14 Plaintiffs

15 v.

16 SEA MAR COMMUNITY HEALTH  
CENTERS

17 Defendant.  
18

Case No.

NOTICE OF REMOVAL OF ACTION  
UNDER 28 USC § 1346(b)(1)

(Clerk's Action Required)

King County Superior Court  
Case No. 21-2-15063-9 SEA

19 TO: THE CLERK OF THE COURT

20 AND TO: ALL PARTIES OF RECORD AND THEIR COUNSEL.

21 PLEASE TAKE NOTICE that Defendant SEA MAR COMMUNITY HEALTH  
22 CENTERS ("Sea Mar"), hereby gives notice of the removal of the above-captioned action, Case  
23 No. 21-2-15063-9 SEA, currently pending in the Superior Court of King County, Washington, to  
24 the United States District Court for the Western District of Washington at Seattle on the grounds  
25 set forth below:

26 **I. STATE COURT ACTION**

27 The State Court action to be removed, *Maria Barnes and Derek Gannon, individually*

1 *and on behalf of all others similarly situated v. Sea Mar Community Health Centers*, was filed in  
 2 King County Superior Court, State of Washington, on November 12, 2021. A true and correct  
 3 copy of the Class Action Complaint filed in King County Superior Court Case No: 21-2-15-130-  
 4 9 SEA is attached as **Exhibit A**. This is a civil action arising out of allegations of negligence per  
 5 se violations of (1) HIPAA 45 C.F.R. § 160 and § 164, (2) unfair trade practices pursuant to FTC  
 6 Act 15 U.S.C. § 45(a)(1), (3) RCW 19.86.101 Washington Consumer Protection Act; as well as  
 7 allegations of (4) negligence, (5) breach of fiduciary duty, (6) breach of express contract, (7)  
 8 breach of implied contract, (8) unjust enrichment, and (9) breach of implied covenant of good  
 9 faith and fair dealing, with claims made by Plaintiffs for actual damages, punitive damages,  
 10 restitution, disgorgement, credit monitoring, attorney fees and costs, equitable, declaratory and  
 11 injunctive relief.

## 12 **II. GROUNDS FOR REMOVAL**

13 The Federally Supported Health Centers Assistance Act allows the United States to deem  
 14 actors, agencies, and employees to be part of the Public Health Service.

### 15 **A. Sea Mar is a Deemed Employee of the Federal Government.**

16 Sea Mar is a community-based health care provider that receives funds from the Health  
 17 Resources & Services Administration. Sea Mar receives government funding because it provides  
 18 primary care services in underserved areas. Sea Mar is a Federally Qualified Health Center. As  
 19 such, Sea Mar has been deemed by the Health Resources and Services Administration, in  
 20 accordance with the Federally Supported Health Centers Assistance Act, to be a Public Health  
 21 Service employee of the federal government. The relevant deeming notices are attached  
 22 collectively as **Exhibit B**.

### 23 **B. The Federal Tort Claims Act, 28 U.S.C. 1346(b) Applies to Plaintiffs’** 24 **Claims.**

25 The Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 1346(b) *et seq.*, provides immunity  
 26 from suits to Sea Mar because Sea Mar has been deemed to be a Public Health Service employee  
 27 of the federal government.

1 Subject to the provisions of chapter 171 of this title, the district  
 2 courts . . . shall have exclusive jurisdiction of civil actions against  
 3 the United States . . . for injury or loss of property, or personal  
 4 injury or death caused by the negligent or wrongful act or omission  
 5 of any employee of the Government while acting within the scope  
 6 of his office or employment, under circumstances where the United  
 7 States, if a private person, would be liable to the claimant in  
 8 accordance with the law of the place where the act or omission  
 9 occurred.

10 The regulations establish that the federal government is a proper party defendant in an  
 11 FTCA suit and not Public Health Service employees like Sea Mar.

12 **C. The Public Health Services Act Applies to Sea Mar.**

13 The Public Health Service Act provides liability protection to Public Health Service  
 14 (“PHS”) employees like Sea Mar under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b). Sea  
 15 Mar is a PHS employee under the Federally Supported Health Centers Assistance Act, 42 U.S.C.  
 16 §§ 233(g)-(n). The *exclusive* remedy for damage for personal injury “resulting from the  
 17 performance of medical, surgical, dental, or *related functions*, ...by any commissioned ...  
 18 employee of the Public Health Service while acting within the scope of his office or  
 19 employment” is *against the United States*. 42 U.S.C. § 233(a). Plaintiffs allege they suffered  
 20 personal injuries, including anxiety and emotional distress, as a result of a data breach incident in  
 21 the Sea Mar environment. The Federally Supported Health Centers Assistance Act (42 U.S.C. §  
 22 233(a)) provides absolute immunity for PHS employees acting within the scope of their  
 23 employment. *Hui v. Castaneda*, 559 U.S. 799, 806 (2010).

24 **D. Sea Mar’s Conduct Was Function Required and Related to the Provision  
 25 of Medical Care.**

26 To facilitate medical care, Sea Mar—like any doctor’s office—creates medical records,  
 27 and collects and maintains personal information from its patients. The maintenance, retention,  
 and security of patients’ records are legally required and “related functions” to the provision of  
 medical care within the scope of federal immunity. Plaintiffs’ claims arise from a data breach  
 event that allegedly allowed access to patients’ personal identifying information (“PII”) and  
 protected health information (“PHI”). Plaintiffs’ alleged injuries therefore undeniably arise out of

1 the “related functions” to medical care—creating and maintaining medical, financial and other  
2 personal records of patients and their guarantors. Sea Mar qualifies for immunity, and in an  
3 FTCA suit, a plaintiff’s exclusive remedy is to proceed in an action against the United States in  
4 district court.

### 5 **III. TIME FOR REMOVAL**

6 There is no time bar for Notice of Removal under the Federal Tort Claims Act 28 U.S.C.  
7 §1346(b)(1) because the district courts have exclusive jurisdiction over actions against the  
8 United States for negligent or wrongful acts or omissions committed by government employees.  
9 “ Subject to the provisions of chapter 171 of this title, the district courts . . . shall have exclusive  
10 jurisdiction of civil actions against the United States . . . for injury or loss of property, or  
11 personal injury . . .”

12 Pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and the Federally  
13 Supported Health Centers Assistance Act, 42 U.S.C. §§ 233(g)-(n) the district court has  
14 exclusive jurisdiction over FTCA claims, and in an FTCA suit the only remedy is against the  
15 United States.

### 16 **IV. REQUIRED DOCUMENTS**

17 Defendant Sea Mar will promptly give written notice to all adverse parties. 28 USC §  
18 1446(d).

19 In accordance with 28 USC § 1446 and LCR 101 (b)(1), a copy of the operative  
20 complaint is attached and filed herewith as **Exhibit A**.

21 Opposing counsel is listed below and is being served with a copy of this Notice as set  
22 forth in the Declaration of Service below in accordance with LCR 101(b)(2).

23 WHEREFORE, Defendant Sea Mar gives notice that the court action pending against it  
24 in King County Superior Court has been removed from that court to the United States District  
25 Court for the Western District of Washington at Seattle.

26 ///

27 ///

1 DATED: February 16, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

2  
3 s/Kathleen A. Nelson

Kathleen A. Nelson, WSBA #22826

4  
5 s/Randy J. Aliment

Randy J. Aliment, WSBA #11440

6  
7 s/Aryn M. Seiler

Aryn M. Seiler, WSBA #57270

8 1111 Third Avenue, Suite 2700

Seattle, Washington 98101

9 (206) 436-2020 / (206)436-2030 Fax

10 [Kathleen.Nelson@lewisbrisbois.com](mailto:Kathleen.Nelson@lewisbrisbois.com)

[Randy.Aliment@lewisbrisbois.com](mailto:Randy.Aliment@lewisbrisbois.com)

11 [Aryn.Seiler@lewisbrisbois.com](mailto:Aryn.Seiler@lewisbrisbois.com)

Attorneys for Defendant

## DECLARATION OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that I caused a true and correct copy of the foregoing to be served via the methods below on February 16, 2022 on the following counsel/party of record:

Alexander F. Strong, WSBA #49839 Bendich Stobaugh & Strong, PC 126 NW Canal Street, Suite 100 Seattle, WA 98107 (206) 622-3536 <i>Attorney for Plaintiff</i>	<input type="checkbox"/> via U.S. Mail, first class, postage prepaid <input type="checkbox"/> via Legal Messenger Hand Delivery <input type="checkbox"/> via Facsimile <input checked="" type="checkbox"/> via CM/ECF <input checked="" type="checkbox"/> via E-mail: <a href="mailto:astrong@bs-s.com">astrong@bs-s.com</a> <a href="mailto:aforsgaard@bs-s.com">aforsgaard@bs-s.com</a> <a href="mailto:cfaltesek@bs-s.com">cfaltesek@bs-s.com</a>
Ben Barnow Anthony L. Parkhill Barnow & Associates, PC 205 West Randolph Street, Ste. 1630 Chicago, IL 60606 (312) 621-2000 <i>Attorney for Plaintiff</i>	<input type="checkbox"/> via U.S. Mail, first class, postage prepaid <input type="checkbox"/> via Legal Messenger Hand Delivery <input type="checkbox"/> via Facsimile <input checked="" type="checkbox"/> via CM/ECF <input checked="" type="checkbox"/> via E-mail: <a href="mailto:b.barnow@barnowlaw.com">b.barnow@barnowlaw.com</a> <a href="mailto:aparkhill@barnowlaw.com">aparkhill@barnowlaw.com</a> <a href="mailto:rprince@barnowlaw.com">rprince@barnowlaw.com</a>
Tina Wolfson Robert Ahdoot Ahdoot & Wolfson, PC 2600 W. Olive Avenue, Suite 500 Burbank, CA 91505-4521 (310) 474-8585 <i>Attorney for Plaintiff</i>	<input type="checkbox"/> via U.S. Mail, first class, postage prepaid <input type="checkbox"/> via Legal Messenger Hand Delivery <input type="checkbox"/> via Facsimile <input checked="" type="checkbox"/> via CM/ECF <input checked="" type="checkbox"/> via E-mail: <a href="mailto:twolfson@ahdootwolfson.com">twolfson@ahdootwolfson.com</a> <a href="mailto:rahdoot@ahdootwolfson.com">rahdoot@ahdootwolfson.com</a>
Andrew W. Ferich Ahdoot & Wolfson, PC 201 King of Prussia Road, Suite 650 Radnor, PA 19087 (310) 474-9111 <i>Attorney for Plaintiff</i>	<input type="checkbox"/> via U.S. Mail, first class, postage prepaid <input type="checkbox"/> via Legal Messenger Hand Delivery <input type="checkbox"/> via Facsimile <input checked="" type="checkbox"/> via CM/ECF <input checked="" type="checkbox"/> via E-mail: <a href="mailto:aferich@ahdootwolfson.com">aferich@ahdootwolfson.com</a> <a href="mailto:hlivamagi@ahdootwolfson.com">hlivamagi@ahdootwolfson.com</a>
Nicholas W. Brown Kristen R. Vogel, NY No. 5195664 Assistant United States Attorney Western District of Washington 700 Stewart Street, Suite 5220 Seattle, Washington 98101-1271 (206) 553-7970 / (206) 553-4067 Fax <i>United States Attorneys</i>	<input type="checkbox"/> via U.S. Mail, first class, postage prepaid <input type="checkbox"/> via Legal Messenger Hand Delivery <input type="checkbox"/> via Facsimile <input checked="" type="checkbox"/> via CM/ECF <input checked="" type="checkbox"/> via E-mail: <a href="mailto:kristen.vogel@usdoj.gov">kristen.vogel@usdoj.gov</a>

1  
2 Dated February 16, 2022 at Seattle, Washington.

3 s/ Annie Kliemann

4 Annie Kliemann

5 [Annie.Kliemann@lewisbrisbois.com](mailto:Annie.Kliemann@lewisbrisbois.com)  
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